

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to Ronald.Hodapp@RRB.GOV. Written comments should be received within 60 days of this notice.

Charles Mierzwa,
Clearance Officer.
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RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Financial Disclosure Statement.
- (2) *Form(s) submitted:* DR-423.
- (3) *OMB Number:* 3220-0127.
- (4) *Expiration date of current OMB clearance:* 05/31/2005.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Respondents:* Individuals or households.
- (7) *Estimated annual number of respondents:* 1,200.
- (8) *Total annual responses:* 1,200.
- (9) *Total annual reporting hours:* 1,700.
- (10) *Collection description:* Under the Railroad Retirement and the Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement

Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or Ronald.Hodapp@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27941]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 24, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 18, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 18, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70-10251)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, and Allegheny Energy Supply Company, LLC ("AE Supply," and together with

Allegheny, "Applicants"),¹ a registered holding company and public-utility company subsidiary of Allegheny; Allegheny Energy Service Corp. ("AESC"), the system service company; the Allegheny wholly-owned public-utility subsidiaries, Monongahela Power Company ("Monongahela"), Mountaineer Gas Company ("Mountaineer"),² The Potomac Edison Company ("Potomac Edison"), West Penn Power Company ("West Penn"), and Allegheny Generating Company ("AGC") (Monongahela, Mountaineer, Potomac Edison, West Penn and AGC, collectively, "Utility Applicants", and along with AE Supply and Allegheny, collectively, "Money Pool Applicants")), and the current and future nonutility subsidiaries of Allegheny ("Nonutility Applicants"),³ 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, have filed an application-declaration ("Application") under sections 6, 7, 9(a), 10, 11, 12(b), 12(c), and 13 of the Act and rules 43, 45, 46, 54, 86, 87, 90 and 91 under the Act.

The Applicants request authority to engage in financing transactions necessary to their ongoing operations and those of their subsidiaries through November 30, 2007 ("Authorization Period") as well as authority to engage in certain other transactions described below that are necessary to the overall operations of the Allegheny system. In addition, the Money Pool Applicants and AESC request authority to continue the current Allegheny system money pool ("Money Pool").

On December 31, 2001, the Commission issued an order⁴ authorizing the Applicants to engage in a broad range of financing transactions through July 31, 2005. The Applicants intend that the authority sought in this

¹ AE Supply is a public utility company within the meaning of the Act, but it is not subject to state regulation. It is the principal electric generating company for the Allegheny system.

² On August 4, 2004, Allegheny announced it had entered into an agreement to sell Mountaineer and all of Allegheny's West Virginia gas assets to a partnership composed of IGS Utilities LLC, IGS Holdings LLC, and affiliates of ArcLight Capital Partners LLC. See SEC File No. 70-10270.

³ Other than AE Supply and the Utility Applicants, the direct or indirect subsidiaries of Allegheny, whether existing or to be formed or acquired in the future, are referred to as the Nonutility Applicants. The current Nonutility Applicants are Allegheny Energy Solutions, Inc., Allegheny Ventures, Inc. ("Ventures"), Mountaineer Gas Services, Inc., and the West Virginia Power & Transmission Company (collectively, "Existing Nonutility Subsidiaries").

⁴ See Holding Co. Act Release No. 27486 (Dec. 31, 2001) ("2001 Financing Order"), as supplemented by Holding Co. Act Release No. 27521 (April 17, 2002), Holding Co. Act Release No. 27579 (Oct. 17, 2002), and Holding Co. Act Release No. 27652 (Feb. 21, 2003) ("Capitalization Order").

Application replace all existing authority granted through orders issued in Commission File Nos. 70-7888, 70-9897 and 70-10100.

A. Summary of Requested Authority

The following authority is sought:

(1) Authority (i) for Allegheny to issue and sell directly, additional common stock or options, warrants, equity-linked securities or stock purchase contracts convertible into or exercisable for common stock, and preferred stock, or to buy or sell derivative securities to hedge these transactions; and (ii) for the Applicants to issue and sell directly, or indirectly through one or more Capital Corps, as defined below, forms of preferred securities other than preferred stock (including, without limitation, trust preferred securities or monthly income preferred securities (collectively, "Preferred Securities"), all of which in the aggregate will not exceed \$1.55 billion ("External Equity Cap")).

During the Authorization Period, Allegheny may issue common stock to the public in the amount of up to \$350 million as previously authorized by the Commission.⁵ In addition, Allegheny may issue common stock in the following amounts for other purposes: (i) Up to \$205 million in connection with Allegheny's employee pension plan, and (ii) up to \$300 million in connection with the conversion of convertible trust preferred securities previously authorized by the Commission.⁶ The balance of the requested authority covered by the External Equity Cap would be used to issue equity securities other than common stock as warranted by circumstances;

(2) Authority for (i) Applicants, AGC, and the Nonutility Applicants to issue and sell to non-associated third parties short- and long-term debt, secured (except for Allegheny) and unsecured, and (ii) for Applicants and the Utility Applicants to engage in short-term debt financing in connection with the Money Pool and for general corporate purposes, all of which in the aggregate will not exceed \$4.575 billion ("External Debt Cap");

(3) Authority (i) for Applicants and the Utility Applicants to enter into guarantees, obtain letters of credit, extend credit, enter into guarantee-type expense agreements or otherwise provide credit support and guarantees of contractual obligations with respect to

the obligations of their direct or indirect subsidiaries, and (ii) for the Nonutility Applicants, to the extent not exempt under rules 45 or 52, to provide guarantees, on behalf or for the benefit of other Nonutility Applicants, in an aggregate amount not to exceed \$3.0 billion any time outstanding;

(4) Authority for the Applicants and, to the extent not exempt under rule 52, for the Utility Applicants and the Nonutility Applicants (i) to enter into hedging transactions with respect to the indebtedness of these companies in order to manage and minimize interest rate costs and (ii) to enter into hedging transactions with respect to anticipatory debt issuances in order to lock-in current interest rates and/or manage interest rate risk exposure;

(5) Authority for Applicants and the Nonutility Applicants to engage in intra-system financings, to the extent not exempt under rules 45 or 52, in an aggregate amount not to exceed \$3.0 billion any time outstanding.

(6) Authority for AE Supply, AGC, and the Nonutility Applicants to pay dividends out of capital and unearned surplus in an amount up to \$2 billion and for the Nonutility Applicants to acquire, retire, or redeem their securities that are held by any associate company, affiliate, or affiliate of an associate company, to the extent permitted under applicable law and the terms of any credit arrangements to which they may be parties;

(7) Authority for Applicants to change the terms of the authorized capitalization of a Nonutility Applicant's capital stock or equivalent ownership interests;

(8) Authority (to the extent not otherwise exempt) for Applicants to transfer securities or assets of existing and new direct or indirect Nonutility Applicants to other direct or indirect Nonutility Applicants or to liquidate or merge Nonutility Applicants;

(9) To the extent not exempt under rule 90(d), authority for Nonutility Applicants to perform services for each other and to sell goods to each other at fair market prices, without regard to "cost," as determined in accordance with rules 90 and 91; and

(10) Authority for Allegheny, the Utility Applicants, and AESC to continue the utility money pool as discussed in further detail below.

B. Financing Parameters

The financing transactions for which the Applicants, Utility Applicants and Nonutility Applicants seek authority would be subject to the following terms and conditions:

(1) Effective Cost of Money on Debt Securities and Borrowings Under Credit Agreements

The effective cost of capital on any security issued by Allegheny or AE Supply will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality, provided that in no event will (a) the interest rate on any debt securities issued under a bank credit facility exceed the greater of (i) 500 basis points over the comparable term London Interbank Offered Rate of (ii) the sum of 8 percent plus the prime rate as announced by a nationally recognized money center bank and (b) the interest rate on any debt securities issued to any other financial investor exceed the sum of 10 percent plus the prime rate as announced by a nationally recognized money center bank.

(2) Maturities

The maturity of long-term debt will be between one and 50 years after the issuance. Preferred Securities and equity-linked securities will be redeemed no later than 50 years after the issuance, unless converted into common stock. Preferred stock issued directly by Allegheny may be perpetual in duration.

(3) Issuance Expenses

The underwriting fees, commissions, and other similar remuneration paid in connection with the issuance of any security will not, in the case of a competitive issuance, exceed prevailing market rates for similar companies of reasonably comparable credit quality, and, in the case of a non-competitive issuance, will not exceed the greater of (1) five percent of the principal or total amount of the securities being issued or (2) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

(4) Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be added to the respective treasuries of the issuing parties and subsequently used principally for general corporate purposes including:

(a) The financing of capital expenditures;

(b) The financing of working capital requirements;

⁵ See Allegheny Energy, Inc., Holding Co. Act Release No. 27796 (Feb. 3, 2004).

⁶ See Allegheny Energy, Inc., Holding Co. Act Release No. 27701 (July 23, 2003).

(c) The repayment and/or refinancing of debt;

(d) The acquisition, retirement, or redemption of securities previously issued by the issuing party;

(e) To fund Allegheny's pension plan with common stock; and

(f) Other lawful purposes, including direct or indirect investment in rule 58 companies, as defined below, by Allegheny, other subsidiaries approved by the Commission, exempt wholesale generators ("EWGs"), and foreign utility companies ("FUCOs") in accordance with the provisions and commitments described below.⁷

(5) Investment Grade Rating

Reestablishing investment grade for all of the Applicants' debt securities is a part of Allegheny's overall plan for returning to financial health. Applicants have a goal of obtaining investment grade ratings for their debt by the end of 2007.

(6) Equity Ratio

Applicants state that they do not have common equity ratios of at least 30 percent, which is the traditional Commission standard applicable to registered holding companies. As reflected in Allegheny's unaudited financial statements, as of September 30, 2004, Allegheny's common equity ratio was 17.4%⁸ and AE Supply's was 10.3%. Applicants request that the

Commission adopt a flexible approach with regard to the common equity ratio standard. The Applicants state that they have experienced significant financial difficulties arising out of developments within the electric utility industry. They maintain that they have carefully analyzed their current situation and have made significant efforts to develop a systematic plan for returning to a financial condition that is consistent with the Commission's traditional standards. They maintain that the authorizations sought in this Application are essential to continuing their progress toward financial health.

Allegheny commits that at any time its ratio of common equity to total capitalization is less than 30%, neither it nor any of its subsidiaries will invest or commit to invest any funds in any new projects that qualify as EWGs or FUCOs under the Act; provided, however, that Allegheny may increase its investment in EWGs as a result of the qualification of existing projects as EWGs, and Allegheny may make additional investments in an existing EWG to the extent necessary to complete any project or desirable to preserve or enhance the value of Allegheny's investment in the EWG. Allegheny requests that the Commission reserve jurisdiction over any additional investment by Allegheny and its subsidiaries in EWGs and FUCOs during the period that Allegheny's common equity ratio is below 30 percent.

Allegheny commits that at any time its ratio of common equity to total capitalization is less than 30%, neither it nor any of its subsidiaries will invest or commit to invest any funds in any new energy-related company within the meaning of rule 58 under the Act ("Rule 58 Company"); provided, however, that Allegheny may increase its investment in an existing Rule 58 Company to the extent necessary to complete any project or desirable to preserve or enhance the value of Allegheny's investment in the company.⁹ In addition, Allegheny and AE Supply request authority to invest in one or more new Rule 58 Companies which may be created in connection with the restructuring and/or reorganization of the existing energy trading business of AE Supply and its subsidiaries. Allegheny requests that the Commission reserve jurisdiction pending completion of the record over any additional investment by Allegheny and its subsidiaries in Rule 58 Companies during the period that Allegheny's common equity ratio is below 30 percent.

C. Description of Proposed Securities Issuances and Related Transactions

All external financing will be at rates or prices and under conditions based upon, or otherwise determined by, competitive capital markets.

(1) Common Stock

Allegheny seeks authority to issue and sell common stock and to issue and sell options, warrants, equity-linked securities, or other stock purchase rights exercisable for common stock or to buy or sell derivative securities to hedge these transactions. Allegheny will not engage in speculative transactions. The aggregate amount of financing obtained by Allegheny during the Authorization Period from the issuance and sale of common stock will not cause Allegheny to exceed the External Equity Cap. Common stock financings may be effected through underwriting agreements of a type generally standard in the industry. Public distributions may be effected through private negotiation with underwriters, dealers, or agents as discussed below, or through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All sales of common stock will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

During the Authorization Period, Allegheny may issue common stock to the public in the amount of up to \$350 million.¹⁰ In addition, Allegheny may issue common stock in the following amounts for other purposes: (i) Up to \$205 million in connection with Allegheny's employee pension plan,¹¹ and (ii) up to \$300 million in connection with the conversion of convertible trust preferred securities.¹² The balance of the requested authority covered by the External Equity Cap would be used to issue equity securities other than common stock as warranted by circumstances.

Common stock may be offered to the public either through an underwriting syndicate (which may be represented by a managing underwriter or underwriters designated by Allegheny) or directly by

⁷ In the 2001 Financing Order, Allegheny received authority to exceed the rule 53 aggregate investment limitation and to utilize a portion of the proceeds of the equity issuances, short-term debt, long-term debt and guarantees in any combination to increase its "aggregate investment" (as defined in rule 53(a)) up to \$2 billion in EWGs and FUCOs. As discussed in this Application, Allegheny's ability to invest in EWGs and FUCOs is subject to certain restrictions as long as its common equity is less than 30 percent of total capitalization.

⁸ For the third quarter of 2004, Allegheny recorded a \$427.5 million consolidated net loss from discontinued operations that includes a non-cash asset impairment charge of \$209.4 million pre-tax (\$129.2 million after tax) from the previously announced sale of the Lincoln generating facility; a non-cash asset impairment charge of \$35.1 million pre-tax (\$20.7 million after tax) associated with the previously announced agreement to sell the West Virginia natural gas operations; and non-cash asset impairment charges of \$445.4 million pre-tax (\$274.7 million after tax) as a result of the previously announced decision to sell the Gleason and Wheatland generating facilities. Discontinued operations also included an after-tax loss of \$2.9 million from operating results at these units. As a result of these charges, the unaudited common equity ratios for Allegheny and AE Supply, respectively, will decrease to 17.4 percent and 10.3 percent as of September 30, 2004. Allegheny notes, however, that its common equity ratio has improved somewhat since the recent issuance of approximately \$152 million of Common Stock. The common equity ratios of the Operating Companies as of September 30, 2004, are as follows: West Penn, 57.6 percent; Potomac Edison, 49.5 percent; and Monongahela, 36.0 percent.

⁹ See the Capitalization Order.

¹⁰ The Commission previously authorized this amount in Holding Co. Act Release No. 27796 (Feb. 3, 2004).

¹¹ The requested authority is in addition to stock issuances authorized under Allegheny's employment compensation plans. See Holding Co. Act Release Nos. 27892 (Sept. 22, 2004), 27869 (June 30, 2004), and 27858 (June 17, 2004).

¹² The Commission previously authorized this amount in Holding Co. Act Release No. 27701 (July 23, 2003).

one or more underwriters acting alone. The aggregate price of the common stock being sold through any underwriter or dealer shall be calculated based on either the specified selling price to the public or the closing price of the common stock on the day the offering is announced. The offering would be effected under an underwriting agreement of a type generally standard in the industry, and Allegheny may grant the underwriters a "green shoe" option to purchase additional shares at the same price then offered to the public solely for the purpose of covering over-allotments (provided that the total number of shares offered initially, together with the number of shares issued under any option, shall not exceed the number of shares authorized for issuance by the Commission).¹³ It is also possible that common stock will be sold by Allegheny through dealers, agents, or directly to a limited number of purchasers or a single purchaser. If dealers are utilized in the sale of any common stock, Allegheny will sell that common stock to the dealers as principals. Any dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

(2) Preferred Stock, Preferred Securities, and Equity Linked Securities

Allegheny and AE Supply seek the flexibility to issue preferred stock and Preferred Securities directly or indirectly through one or more financing subsidiaries ("Capital Corps") organized by them specifically for this purpose.¹⁴ The aggregate amount of financing obtained by Allegheny and AE Supply during the Authorization Period from the issuance and sale of preferred stock, Preferred Securities, and equity linked securities will not cause Allegheny and AE Supply to exceed the External Debt Cap.

¹³ The aggregate amount of the additional common stock for which authorization is sought also takes into account the permitted increase in the size of the offering that could occur under rule 462(b) of the Securities Act of 1933 through an automatically effective amendment to an Allegheny registration statement.

¹⁴ Allegheny, AE Supply, and their subsidiaries, other than the Utility Applicants, were authorized in Holding Co. Act Release No. 27486 (Dec. 31, 2001) to form one or more Capital Corps as direct or indirect subsidiaries to serve as financing entities and to issue debt and equity securities, including trust preferred securities to third parties. In addition, Allegheny and AE Supply and the Nonutility Applicants received authorization: (a) To issue debentures or other evidences of indebtedness to Capital Corps in return for the proceeds of the financing, (b) to acquire voting interests or equity securities issued by Capital Corps, and (c) to guarantee the obligations of Capital Corps.

Preferred stock or Preferred Securities may be issued in one or more series with the rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by the board of directors of the Applicant undertaking the issuance. Dividends or distributions on preferred stock and Preferred Securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms that allow the issuer to defer dividend payments for specified periods.

Equity-linked securities, including units consisting of a combination of incorporated options, warrants, and/or forward equity purchase contracts with debt, preferred stock, or Preferred Securities, will be exercisable or exchangeable for or convertible into, either mandatorily or at the holder's option, common stock or indebtedness. Alternatively, equity linked securities will allow the holder to surrender to the issuer or apply the value of a security issued by Allegheny, as approved by the Commission, to the holder's obligation to make a payment on another security of Allegheny issued under Commission authorization.¹⁵ Any convertible or equity-linked securities will be convertible into or linked to common stock, Preferred Securities, or unsecured debt that Allegheny otherwise is authorized by Commission order to issue directly, or indirectly through Capital Corps.

(3) Long-Term Debt

Applicants, on their own behalf and on behalf of the Nonutility Applicants and AGC, request Commission authorization to issue during the Authorization Period secured¹⁶ and unsecured long-term debt securities in an aggregate principal amount outstanding at any time that will not cause them to exceed the External Debt Cap. Applicants, the Nonutility Applicants, and AGC may issue unsecured long-term debt directly, or, in the case of Applicants and the Nonutility Applicants, through one or

¹⁵ For example, Allegheny may issue common stock or common stock warrants linked with debt securities. The holder will be obligated to pay to the issuer an additional amount of consideration at a specified date for the common stock but is authorized to surrender the linked debt security to or for the benefit of the issuer in lieu of the cash payment.

¹⁶ Allegheny does not seek authorization at this time to issue secured long-term debt securities. Applicants note, however, that the requested authority does include outstanding debt held by AE Supply that is secured by substantially all of its assets, including cash, utility assets, accounts receivables, and its power sales and lease agreements with the Utility Applicants.

more Capital Corps, in the form of bonds, notes, medium-term notes, or debentures under one or more indentures, or long-term indebtedness under agreements with banks or other institutional lenders. Each series of long-term debt issued directly by Applicants, the Nonutility Applicants, and AGC will have a designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, and other terms and conditions as Applicants, the Nonutility Applicants, and AGC may determine at the time of issuance.

If applicable, the terms of the long-term debt will be designed to parallel the terms of the security issued by any Capital Corp to which the long-term debt relates. Any long-term debt (a) may be convertible into any other securities of Allegheny, AE Supply, the Nonutility Applicants, or AGC; (b) will have maturities up to 50 years; (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at a premium above the principal amount of them; (d) may be entitled to mandatory or optional sinking fund provisions; (e) may provide for reset of the coupon under a remarketing arrangement; (f) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; (g) may be called from existing investors by a third party; and (h) may be entitled to the benefit of affirmative or negative financial or other covenants.

The maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Allegheny, AE Supply, the Nonutility Applicants, and AGC will determine the specific terms of any long-term debt at the time of issuance and will comply in all regards with the financing parameters set forth above.

(4) Short-Term Debt

Applicants and the Nonutility Applicants seek authority to issue directly, or indirectly through a Capital Corp, commercial paper, promissory notes and other forms of short-term indebtedness having varying maturities not to exceed one year, but which may be subject to extension to a final

maturity not to exceed 390 days¹⁷ ("Short-Term Debt") in an aggregate amount that will not cause them to exceed the External Debt Cap, to make loans to subsidiaries, and for their own corporate purposes. Allegheny, AE Supply and the Utility Applicants, other than AGC, request authority to issue Short-Term Debt to fund the Money Pool. The Utility Applicants also seek authority to issue Short-Term Debt for general corporate purposes. In no case will the issuance of Short-Term Debt cause any of these companies to exceed the External Debt Cap. The Utility Applicants seek Short-Term Debt authority in amounts itemized further below. Maturities will be determined at the time of issuance by market conditions, the effective interest costs, and the issuer's anticipated cash flow, including the proceeds of other borrowings.

Commercial paper will be sold in established domestic or European commercial paper markets. It will be sold directly or to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold directly or to commercial paper dealers generally. Allegheny and AE Supply expect that the dealers acquiring commercial paper from them, any Capital Corp or the Nonutility Applicants will re-offer the paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies, money market funds, and other funds.

The Applicants propose that they, the Utility Applicants, the Nonutility Applicants, and any Capital Corp may establish and maintain back-up credit lines with banks or other institutional lenders to support their commercial paper program(s) and to establish other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings, as each of them may deem appropriate in light of its needs and existing market conditions. Allegheny and AE Supply propose, in general, taking appropriate long and short-term considerations into account, to utilize

the most economical means available at any time to meet their short-term financing requirements and will ensure that the Utility Applicants, the Nonutility Applicants, and any Capital Corp will do likewise.

Applicants, the Utility Applicants, the Nonutility Applicants, and any Capital Corp propose to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as each of them individually may deem appropriate in light of its needs and market conditions at the time of issuance.

AE Supply, the Utility Applicants and the Nonutility Applicants also seek the flexibility to issue secured short-term debt as circumstances warrant to provide maximum flexibility for their financial operations. AE Supply currently has debt that is secured by substantially all of its assets, including cash, utility assets, accounts receivable, and power sales and lease agreements with the Utility Applicants. Any secured short-term debt issued by the Utility Applicants would similarly be secured by the respective Utility Applicant's cash, utility assets or accounts receivable.

(5) Credit Enhancement

Applicants, the Utility Applicants, and the Nonutility Applicants may obtain credit enhancement for securities authorized by the Commission. This credit enhancement could include insurance, a letter of credit, or a liquidity facility. Applicants, the Utility Applicants, and the Nonutility Applicants anticipate they may be required to provide credit enhancement if they issue floating rate securities, while credit enhancement would be a purely economic decision for fixed rate securities. Applicants, the Utility Applicants, and the Nonutility Applicants anticipate that if they are required to pay a premium or fee to obtain credit enhancement, it is likely that they would realize a net benefit through a reduced interest rate on the new securities. Applicants, the Utility Applicants, and the Nonutility Applicants will obtain credit enhancement only if it is economically beneficial, taking into consideration fees required to obtain the product and market conditions.

(6) Hedging Transactions

Applicants, the Utility Applicants, and the Nonutility Applicants may enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to the limitations and restrictions set forth here, in order to reduce or manage

interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") with senior debt ratings, as published by Standard and Poor's Ratings Group ("Standard and Poor's"), equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service ("Moody's") or Fitch Investor Service ("Fitch"). Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations (collectively, "Instruments"). The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Applicants, the Utility Applicants, and the Nonutility Applicants will not engage in speculative transactions. Fees, commissions, and other amounts payable to the counterparty or exchange (excluding the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Applicants, the Utility Applicants, and the Nonutility Applicants also propose to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"). Applicants, the Utility Applicants, and the Nonutility Applicants would enter into these transactions only with Approved Counterparties and subject to certain limitations and restrictions as set forth here. Anticipatory Hedges would be used to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each, "Forward Sale"); (ii) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations ("Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase,

¹⁷ The ability to extend the maturity of commercial paper notes is a feature of an extendible commercial notes program. The maturity of commercial paper notes issued under an extendible commercial notes program is 365 days or less; however, if the principal of any commercial paper note is not paid at maturity, the maturity of the commercial paper note will be automatically extended to 390 days from the date of original issuance.

Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps, and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Each Applicant, Utility Applicant, or Nonutility Applicant will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution and may decide to lock in interest rates and/or limit exposure to interest rate increases. Applicants and the Utility Applicants represent, and Applicants represent on behalf of the Nonutility Applicants, that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. Applicants, the Utility Applicants, and the Nonutility Applicants will comply with Statement of Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). They also will comply with any future FASB financial disclosure requirements associated with hedging transactions.

(7) Guarantees

Allegheny, AE Supply and the Utility Applicants request authority to enter, directly or, in the case of the Applicants, indirectly through one or more Capital Corps, into guarantees, obtain letters of credit, support or expense agreements, or otherwise to provide credit support with respect to debt securities or other contractual obligations of any of their direct or indirect subsidiaries from time to time through the Authorization Period ("Guarantees") in an amount not to exceed \$3 billion ("Aggregate Guarantee Limitation") based on the amount at risk at any one time. The amount of any parent guarantees respecting the obligations of any subsidiaries also will be subject to the limitations of rule 53(a)(1) or rule 58(a)(i), as applicable. Allegheny, AE Supply and the Utility Applicants also request authority to guarantee the performance obligations

of their direct or indirect subsidiaries as may be appropriate or necessary to enable the subsidiaries to carry on the ordinary course of their businesses. Any guarantees will be subject to the Aggregate Guarantee Limitation.

Allegheny and AE Supply request authority for the Nonutility Applicants to enter, directly or indirectly through one or more Capital Corps, into guarantees, obtain letters of credit, support or expense agreements, or otherwise to provide credit support with respect to debt securities or other contractual obligations of other Nonutility Applicants from time to time through the Authorization Period in an aggregate principal amount that, together with the Guarantees will not exceed the Aggregate Guarantee Limitation at any one time, exclusive of any guarantees and other forms of credit support that are exempt under rule 45(b) and rule 52(b). The amount of Nonutility Applicant guarantees in respect of obligations of any Rule 58 Companies shall remain subject to the limitations of rule 58(a)(i). Allegheny and AE Supply also request authority for the Nonutility Applicants to guarantee the performance obligations of other Nonutility Applicants as may be appropriate or necessary to enable the company whose obligations are being guaranteed to carry on the ordinary course of its business. These guarantees will be subject to the Aggregate Guarantee Limitation.

Applicants and the Utility Applicants anticipate that during the Authorization Period they may need to issue guarantees and obtain letters of credit for various purposes. One likely instance in which these issuances may occur is the posting of collateral in connection with participation in wholesale energy markets. Another likely issuance involves the expected divestiture of certain assets as part of the Applicants' overall plans for returning to financial health. The Application states that it may be necessary to issue certain guarantees in connection with those transactions. Applicants and the Utility Applicants are seeking an amount of guarantee authority they expect will be sufficient for these purposes and to have an appropriate amount of additional authority available to them to respond to unanticipated circumstances or opportunities.

Certain of the guarantees for which authority is sought may be in support of the obligations of subsidiaries or associate companies that are not capable of exact quantification. In these cases, the company issuing the guarantee will determine the exposure of the

instrument for purposes of measuring compliance with the Aggregate Guarantee Limitation by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. With regard to financial guarantees, the terms of the securities of the subsidiaries or associate companies for which a guarantee is issued will comply with the financing parameters set forth above. If appropriate, these estimates will be made in accordance with GAAP, and these estimates will be re-evaluated periodically.

A company issuing a guarantee authorized under this request may receive a fee for each guarantee from the company on whose behalf the guarantee was issued. This fee will not be greater than the costs, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding. Any guarantee that is outstanding at the end of the Authorization Period will remain in force until it expires or terminates in accordance with its terms.

(8) Intra-System Financing

Applicants request authorization, consistent with the requirements of section 12(a) of the Act, to engage in intra-system financings with each other and the Existing Nonutility Subsidiaries, and for the Existing Nonutility Subsidiaries to engage in intra-system financings among themselves, in an aggregate amount not to exceed \$3.0 billion outstanding at any time during the Authorization Period. Generally, Allegheny's and AE Supply's or the financing Nonutility Applicant's loans to, and purchase of capital stock from, the financed Nonutility Applicants will be exempt under rule 52, and capital contributions and open account advances without interest will be exempt under rule 45(b). Loans by Applicants or a Nonutility Applicant to a Nonutility Applicant generally will have interest rates and maturity dates that are designed to parallel the lending company's effective cost of capital, in accordance with rule 52(b). To the extent that any intra-system loans or extensions of credit are not exempt under rule 45(b) or rule 52, as applicable, the company making the loan or extending the credit may charge interest at the same effective rate of interest as the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of that company, including an allocated share of commitment fees and related expenses. If none of these borrowings are outstanding, then the interest rate shall be predicated on the

Federal Funds effective rate of interest as quoted daily by the Federal Reserve Bank of New York. In the limited circumstances where the Nonutility Applicant effecting the borrowing is not a direct or indirect wholly-owned subsidiary of Allegheny, authority is requested under the Act for the Applicants or Nonutility Applicant to make the loan to this Nonutility Applicant at an interest rate and maturity designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Applicant, that Nonutility Applicant will not provide any services to any associate Nonutility Applicant, except a company that meets one of the conditions for rendering of services on a basis other than at cost as described below. Allegheny and AE Supply will comply with the requirements of rule 45(c) regarding tax allocations unless they receive further approval from the Commission to alter this requirement.

(9) Payment of Dividends and Certain Transactions Involving Affiliate and Associate Company Securities

Applicants seek authority for AE Supply, the Utility Applicants and the Nonutility Applicants to pay through the Authorization Period, to the extent permitted under applicable corporate law, up to \$2.0 billion in dividends out of capital or unearned surplus and to acquire, retire, or redeem any securities of these companies that are held by an associated company, an affiliate, or an affiliate of an associate company.

There may be situations in which AE Supply, AGC, or a Nonutility Applicant will have unrestricted cash available for distribution in excess of current and retained earnings resulting from a disposition of assets, a restructuring or other accounting charge that eliminated retained earnings, or from its normal operations (excluding debt financing). For example, the Commission already has granted AGC authority to pay dividends out of capital and unearned surplus through December 31, 2005.¹⁸ As noted in the AGC Dividend Order, AGC is a single asset company with declining capital needs. Because AGC has only one asset, a 40 percent interest in a 2100 megawatt hydroelectric station, and other Allegheny public utility company subsidiaries take all of the capacity from that asset, the company, by design, has no growth opportunity. Cash received from

revenues exceeds the cash requirements for operating expenses and return primarily because of the recovery of depreciation expense. AGC's owners, AE Supply and Monongahela Power, expect a return on, as well as a return of, their investment. By design, the annual dividends must exceed the annual earnings to avoid a cash buildup approximately equal to the annual depreciation. Similarly, the Commission granted AE Supply authority to pay dividends out of capital and unearned surplus through July 31, 2005 in the Capitalization Order. As explained in that order, dividend payments were necessary to maintain debt repayment at the Allegheny level using funds generated from assets sales by AE Supply. The Commission has likewise authorized payment of dividends out of capital and unearned surplus for the Existing Nonutility Subsidiaries under certain circumstances.¹⁹

With respect to the remaining Utility Applicants, the requested dividend authority is intended only to permit Allegheny to comply with its obligations under an intercreditor agreement between Allegheny, AE Supply and their respective lenders. Specifically, when Allegheny and AE Supply restructured their debt in February 2003, the lenders required that Allegheny and AE Supply enter into an intercreditor agreement under which, if either company or any of their subsidiaries were to issue debt or equity, a percentage of the proceeds under certain circumstances would be paid as a dividend to Allegheny in the case where AE Supply (or one of its subsidiaries) is the issuer, or as a capital contribution to AE Supply if Allegheny (or one of its subsidiaries (other than AE Supply or its subsidiaries)) is the issuer. This intercreditor agreement continues in place until November 2007, when debt held by certain parties to the intercreditor agreement matures. Until then, should Allegheny or any of its subsidiaries issue debt or equity under the circumstances specified in the intercreditor agreement, an amount equal to the proceeds must be contributed to AE Supply. In order for Allegheny to accomplish this, if any of Allegheny's subsidiaries (other than AE Supply or its subsidiaries) is the issuer, it must pay dividends to Allegheny to provide Allegheny with sufficient funds to make the required contribution to AE Supply.

The dividend authority requested for the remaining Utility Applicants, then, is intended solely to enable Allegheny

to comply with the terms of the intercreditor agreement. Any amounts paid to Allegheny by these Utility Applicants will be immediately contributed back to the applicable Utility Applicant so the dividends will have no effect on the Utility Applicant's paid-in capital account. Simply put, although such payments technically constitute dividends, they do not have the effect on capitalization that dividends are normally understood to have as they do not result in any permanent shifts of capital from subsidiary to parent.²⁰

Consistent with these considerations, Applicants request authorization for AE Supply, AGC, the Utility Applicants and the Nonutility Applicants to pay dividends out of capital and unearned surplus through the Authorization Period in the amounts specified above, provided, however, that, without further approval of the Commission, no Nonutility Applicant will declare or pay any dividend out of capital or unearned surplus if that Nonutility Applicant derives any material part of its revenues from the sale of goods, services or electricity to an Allegheny subsidiary that is a public utility company under the Act. In addition, none of AE Supply, AGC, or the Nonutility Applicants will declare or pay any dividend out of capital or unearned surplus unless it: (i) Has received excess cash as a result of the sale of its assets; (ii) has engaged in a restructuring or reorganization; and/or (iii) is returning capital to an associate company.

(10) Money Pool and Utility Applicant Short-Term Debt Limits

In a series of prior orders,²¹ the Money Pool Applicants were

²⁰ As noted, the intercreditor agreement applies equally to other Allegheny subsidiaries as well, including AE Supply, AGC and the Non-Utility Subsidiaries. Accordingly, certain of the dividend authority requested for AE Supply, AGC, and the Non-Utility Subsidiaries may be used to satisfy obligations under the intercreditor agreement. As with the Utility Applicants, however, any dividends paid by these companies under the intercreditor agreement will have no effect on their paid-in capital accounts as any payments made are immediately returned. The structure of the intercreditor agreement has been previously explained in File No. 70-10100.

²¹ See orders dated January 29, 1992 (Holding Co. Act Release No. 25462), February 28, 1992 (Holding Co. Act Release No. 25481), July 14, 1992 (Holding Co. Act Release No. 22581), November 5, 1993 (Holding Co. Act Release No. 25919), November 28, 1995 (Holding Co. Act Release No. 26418), April 18, 1996 (Holding Co. Act Release No. 26506), December 23, 1997 (Holding Co. Act Release No. 26804), May 19, 1999 (Holding Co. Act Release No. 27030), October 8, 1999 (Holding Co. Act Release No. 27084), December 17, 2001 (Holding Co. Act Release No. 27475), October 24, 2002 (Holding Co. Act Release No. 27585), July 14, 2000 (Holding Co. Act Release No. 27199) ("Prior Money Pool Orders").

¹⁸ Holding Co. Act Release No. 27571 (Sept. 27, 2002) ("AGC Dividend Order"). An extension of this authority through the Authorization Period is sought to ensure that the system financing authority is consolidated into a single authorization period.

¹⁹ Holding Co. Act. Release No. 27878 (July 27, 2004).

authorized, among other things, to establish and participate in the Money Pool. This authority currently exists through April 30, 2005. The Money Pool Applicants request authority to continue the Money Pool through the Authorization Period, subject to the same terms and conditions set forth in the Prior Money Pool Orders.²² The Money Pool Applicants request that the Commission authorize (i) Monongahela Power, Mountaineer, Potomac Edison, and West Penn to continue participation in the Money Pool as both lenders and borrowers to the extent not exempt under rule 52; (ii) AGC to continue participation in the Money Pool as a borrower only, to the extent not exempt under rule 52; (iii) Allegheny and AE Supply to continue participation as lenders only.

The Money Pool will continue to be administered on behalf of the Money Pool Applicants by AESC and under the direction of an officer of AESC. AESC will not be a participant in the Money Pool. The Money Pool will consist principally of surplus funds received from the Money Pool Applicants. In addition to surplus funds, funds borrowed by Allegheny, AE Supply, Monongahela, Potomac Edison, and West Penn through the issuance of short-term notes or other debt, or by the selling of commercial paper, as described above ("External Funds"), may be a source of funds for making loans or advances to companies borrowing from the Money Pool.

The Money Pool Applicants do not propose any material changes to the operation of the Money Pool as currently authorized. Transactions under the Money Pool will be designed to match, on a daily basis, the surplus funds of the pool participants with the short-term borrowing requirements of the pool participants (other than the pool participants who are lenders only), thereby minimizing the need for short-term debt to be incurred by the pool participants from external sources. The Money Pool Applicants believe that the cost of the proposed borrowings through the Money Pool generally will be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Money Pool generally will be higher than the typical yield on short-term investments.

The funds available through the Money Pool will be loaned on a short-term basis to those eligible pool

participants that have short-term debt requirements. If no such short-term requirements match the amount of funds that are available for the Money Pool for the period such funds are available, AESC will invest the funds, directly or indirectly, as described below and will allocate the interest earned on these investments among the pool participants providing the funds on a pro rata basis according to the amount of the funds provided:

(1) Direct or indirect obligations of the United States Government;

(2) Certificates of Deposit of commercial banks with assets exceeding \$2.5 billion;

(3) Bankers acceptances of commercial banks with assets exceeding \$2.5 billion;

(4) Commercial paper of companies having a minimum net worth of \$150 million having a "1" commercial paper rating by at least two of the three recognized rating services (Moody's, Standard & Poor's, and Fitch);

(5) Taxable or tax exempt institutional money market funds with assets of at least \$500M which restrict investments to high quality money market instruments; and

(6) Other investments as are permitted by section 9(c) of the Act and rule 40 under the Act.

All borrowings from and contributions to the Money Pool will be documented and will be evidenced on the books of each pool participant that is borrowing from or contributing surplus funds to the Money Pool. Any pool participant contributing funds to the Money Pool may withdraw those funds at any time without notice to satisfy its daily need for funds. All short-term debt through the Money Pool (other than from External Funds) will be payable on demand, may be prepaid by any borrowing pool participant at any time without penalty, and will bear interest for both the borrower and lender. Interest income and expense will be calculated using the previous day's Fed Funds Effective Interest Rate ("Fed Funds Rate") as quoted by the Federal Reserve Bank of New York, as long as this rate is at least, four basis points lower than the previous day's seven-day commercial paper rate as quoted by the same source. Whenever the Fed Funds Rate is not at least four basis points lower than the seven-day commercial paper rate, then the seven-day commercial paper rate minus four basis points should be used. Interest income and expense will be calculated daily and settled on a cash basis on the first business day of the following month. Each of the Utility Applicants may use the proceeds it borrows from

the Money Pool (i) for the interim financing of its construction and capital expenditure programs; (ii) for its working capital needs; (iii) for the repayment, redemption, or refinancing of its debt and preferred stock; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) to otherwise finance its own business and for other lawful general corporate purposes. Each of the following companies requests authority to borrow up to an amount at any one time outstanding from the Money Pool as set forth below: AGC, \$100 million; Monongahela Power, \$125 million; Mountaineer, \$100 million; Potomac Edison, \$150 million; and West Penn, \$200 million.

Allegheny, AE Supply and the Utility Applicants also request authority to raise External Funds through short-term borrowing, as discussed above. Any External Funds raised by the Utility Applicants will be in an amount equal to the Utility Applicant's authority to borrow from the Money Pool.

Allegheny, AE Supply and the Utility Applicants, other than AGC, would use the External Funds received in this way either to make loans or advances to companies borrowing from the Money Pool or for general corporate purposes. AGC would use these External Funds for general corporate purposes only.

D. Changes in Capitalization and Internal Reorganizations of Nonutility Applicants

Allegheny and AE Supply cannot ascertain at this time the portion of an individual Nonutility Applicant's aggregate financing to be effected through the sale of capital stock or equivalent interests in the form of limited liability company or general partnership interests during the Authorization Period under rule 52 or by order of the Commission. However, a proposed sale of capital stock or equivalent interests may in some cases exceed the capital stock or equivalent interests of a Nonutility Applicant authorized at that time. In addition, a Nonutility Applicant may elect to use capital stock with no par value, or convert from one form of business organization (e.g., a corporation) to another (e.g., a limited liability company). A Nonutility Applicant also may wish to undertake a reverse stock split in order to reduce franchise taxes or for other corporate purposes. Applicants, therefore, request authority to change the terms of any Nonutility Applicant's authorized capitalization, as needed to accommodate any proposed transactions and to provide for future issuances of securities, by an amount

²² The Commission has authorized Mountaineer to participate in the Money Pool through December 31, 2005.

the Applicants or another parent company deem appropriate, provided that the consent of all other shareholders or owners of equivalent interests to a change has been obtained if the Nonutility Applicant in question is not a direct or indirect wholly-owned subsidiary company of one of the Applicants. The requested authority would permit a Nonutility Applicant to increase the number of its authorized shares of capital stock or equivalent interests, change the par value of its capital stock, change between par value and no-par value stock, or convert from one form of business organization to another without additional Commission approval.

In addition, to the extent that these transactions are not otherwise exempt under the Act or the Commission's rules under the Act, Applicants request approval to consolidate, sell, transfer, or otherwise reorganize all or any part of their direct and indirect ownership interests in Nonutility Applicants, as well as investment interests in entities that are not subsidiary companies. To effect any consolidation or other reorganization, Applicants may wish either to contribute the equity securities of one Nonutility Applicant to another Nonutility Applicant, including a newly formed intermediate company ("Intermediate Company"),²³ or sell (or cause a Nonutility Applicant to sell) the equity securities or all or part of the assets of one Nonutility Applicant to another. These transactions also may occur through a Nonutility Applicant selling or transferring the equity securities of a subsidiary or all or part of the subsidiary's assets as a dividend to an Intermediate Company or to another Nonutility Applicant, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Applicant in any transaction structured as an intra-system sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Allegheny and AE Supply also may liquidate or merge Nonutility Applicants.

E. Exemption of Certain Transactions From At-Cost Requirements

Allegheny and AE Supply seek an exemption under rule 13(b) for the Nonutility Applicants to provide certain services in the ordinary course of their

business to each other, in certain circumstances described below, including but not limited to cost or fair market prices.²⁴ Any services provided by the Nonutility Applicants to the Operating Companies and Mountaineer will continue to be provided "at cost" consistent with rules 90 and 91. A Nonutility Applicant will not provide services at other than cost to any other Nonutility Applicant that, in turn, provides these services, directly or indirectly, to any other associate company that is not a Nonutility Applicant, except under the requirements of the Commission's rules and regulations under Section 13(b) or an exemption from those rules and regulations obtained from the Commission.

Applicants request authority for the Nonutility Applicants to provide services to each other at other than cost in any case where the Nonutility Applicant receiving the services is:

(a) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(b) An EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser of the electricity is not an associate public utility company;

(c) A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively (a) at rates negotiated at arm's-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than an associate utility company) at the purchaser's avoided cost as determined in accordance with FERC's regulations under PURPA;

(d) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an associate public utility company; or

(e) A direct or indirect subsidiary of Allegheny formed under rule 58 under the Act or any other nonutility company that (i) is partially owned by Allegheny,

provided that the ultimate recipient of the services is not an associate public utility company, or (ii) is engaged solely in the business of developing, owning, operating, and/or providing services to Nonutility Applicants described in clauses (a) through (d) immediately above, or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51070; File No. SR-Amex-2005-008]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Options Transaction Fees in Connection With the Standard & Poor's Depositary Receipts

January 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 13, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by adopting a per contract license fee in connection with specialist and registered options traders ("ROTs") transactions in options on Standard & Poor's Depositary Receipts ("SPDRs") and by updating the symbol for the NASDAQ-100 Index Tracking Stock. The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the Amex's

²³ The Commission previously authorized AE Supply to organize Intermediate Companies to facilitate development and consummation of investments in exempt activities (Holding Co. Act Release No. 27383 (April 20, 2001)).

²⁴ By order dated October 27, 1995 (Holding Co. Act Release No. 26401), Allegheny has received authorization for Ventures to provide, directly or through a special purpose subsidiary, energy management services and demand side management services to non-associate companies at market prices.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.